

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

**August 20, 1998**

**DIVISION TWO**

Court convened at 9:15 A.M.

Present: Boren, P.J., Fukuto, J., Nott, J., Zebrowski, J., and G. Villanueva, Deputy Clerk.

Each of the following:

B114025 People v. Bambrick  
B116965 People v. Coss  
B117939 People v. Nichols  
B116201 People v. Ortega  
B111213 People v. Edwards  
B117213 People v. Phillips  
B083494 St. Hilaire v. Deyo  
B113214 People v. Connin  
B117134 People v. Bernoudy  
B106753 Cooks v. Knothe  
B110580 People v. Meza  
B110872 People v. Montay P.  
B113619 People v. Simmons  
B111811 People v. Willis  
B117278 People v. Rios & Sanchez  
B120520 Barton v. Wells Fargo  
B123346 Delia v. S.C.L.A.  
B117615 Matter of Joy L.  
B119576 Matter of Gregory H.  
B112283 People v. Joffrion  
B114229 People v. Gilpin  
B117917 People v. Rudy F.  
B116297 People v. Nash  
B113453 People v. Rowland  
B113534 People v. Ortiz  
B117464 People v. Lofton  
B117652 Zarringhalam v D'Amato  
B117979 L.A. County v. Civil Svc Comm

Argument waived, cause submitted.

DIVISION TWO (Continued)

B095945     Sprague  
               v.  
               City of Los Angeles

Merits:  
Argued by Katherine Hamilton for appellant and by Robert Mann for respondent. Cause submitted.

B110836     Ratay  
               v.  
               Bellas

Merits:  
Argued by James Harrison for appellant and by Christina Imre for respondent. Cause submitted.

B119221     Goodson  
               v.  
               Perfect Fit Ent.

Merits:  
Argued by Kristine Olsen for appellant and by Sandra Smith for respondent. Cause submitted.

B111557     Flores  
               v.  
               Mahatha

Merits:  
Argued by Kevin Meguire for appellant and by Glenn Moret for respondent. Cause submitted.

DIVISION TWO (Continued)

B104661     Stabile  
              v.  
              California Federal Bank

Merits:  
Argued by Michael Lapidus for appellant and by Dennis Franks for  
respondent. Cause submitted.

B117044     Cloud  
              v.  
              Northrop Grumman Corp.

Merits:  
Argued by Judith Williams for appellant and by Tracey Kennedy for  
respondent. Cause submitted.

B117386     Greenfield  
              v.  
              Hashim

Merits:  
Argued by Todd Allen for appellant. No appearance on behalf of  
respondent. Submitted.

Court recessed.

The Court reconvened at 1:00 P.M.

Present: Boren, P.J., Fukuto, J., Nott, J., Zebrowski, J., and G. Villanueva, Deputy Clerk.

B116892     Baker  
              v.  
              County of L.A.

Merits:  
Argued by William Cleary, Jr. for appellant and by Michael Fitts for  
respondent. Cause submitted.

DIVISION TWO (Continued)

B115758     People  
              v.  
              Hernandez

Merits:

Argued by Maxine Weksler for appellant and by Kenneth Byrne, Deputy Attorney General for respondent. Cause submitted.

B121437     L & B Real Estate  
              v.  
              S.C.L.A.  
              (Schwab, r.p.i.)

Merits:

Argued by Mitchel Ezer for petitioner and by Jay Norton for real party in interest. Cause submitted.

B121129     Hondo Company Inc.  
              v.  
              S.C.L.A.  
              (Bobbie Jean King, r.p.i.)

Merits:

Argued by Sandra Smith for petitioner and by Richard Caplan for real party in interest. Cause submitted.

B113295     Hill  
              v.  
              City of Los Angeles

Merits:

Argued by Cheryl Ward for appellant and by Diane Marchant for respondent. Cause submitted.

DIVISION TWO (Continued)

B118830     Indelicato  
              v.  
              Pacific Link International

Merits:  
Argued by Lester Aponte for appellant and by Larry Sharnberger for  
respondent. Cause submitted.

B121005     Canon USA Inc.  
              v.  
              S.C.L.A.  
              (Rhulen Company Inc.,, r.p.i.)

Merits:  
Argued by Thomas Freeman for petitioner and by Daniel Padova for real  
party in interest. Cause submitted.

B1189547     Anderson  
              v.  
              S.C.L.A.  
              (Quackenbush, r.p.i.)

Merits:  
Argued by Jeanne Irving for petitioner and by Jean Pierre Noguez for real  
party in interest. Cause submitted.

Court adjourned.

August 20, 1998-Continued

## DIVISION TWO (Continued)

B112980      People                                  (Certified for Publication)  
v.  
Rodriguez

The abstract of judgment is ordered corrected to reflect that defendant (appellant) was sentenced to a term of life imprisonment without the possibility of parole. The superior court is ordered to forward a certified copy of the corrected abstract to the Department of Corrections. In all other respects, the judgment is affirmed.

Zebrowski, J.

We concur:   Fukuto, Acting P.J.  
                      Nott, J.

[illegible]

The Court:

The judgment is affirmed.

Fukuto, Acting P.J., Nott, J., Zebrowski, J.

B112878      Yepremian, et al.      (Not for Publication)  
v.  
Kabayan, et al.

The dismissal of the cross-complaint as to respondent Carlsmith, Ball, etc. is reversed with directions to grant leave to amend. The dismissal of the cross-complaint as to respondent Kabayan is affirmed. Respondent Kabayan to recover costs. Other parties to bear their own costs.

Zebrowski, J.

We concur:   Boren, P.J.  
                      Nott, J.

August 20, 1998-Continued

## DIVISION TWO (Continued)

B116911      People                                (Not for Publication)  
v.  
**Jackson**

The Court:

The judgment is affirmed.

Fukuto, Acting P.J., Nott, J., Zebrowski, J.

### DIVISION THREE

B114408 People (Not for Publication)  
v.  
Hernandez

The judgment is affirmed. The trial court is directed to correct its minute orders consistent with this opinion.

Croskey, J.

We concur: Klein, P.J.  
Aldrich, J.

B118920 Old Republic Insurance Company, et al. (Certified for Publication)  
B118923 v.  
Superior Court, Los Angeles County  
(Nautilus Insurance Company, r.p.i.)

The order to show cause heretofore issued, having served its purpose, is discharged. A peremptory writ shall issue in these consolidated proceedings directing the trial court to vacate its order of December 17, 1997 denying petitioners' motions for summary judgment and to enter a new and different order granting the same. The stay of proceedings in the trial court which we heretofore issued shall be dissolved as of the date of our issuance of the remittitur herein. Petitioners shall recover their costs.

Croskey, J.

We concur: Klein, P.J.  
Aldrich, J.

DIVISION THREE (Continued)

B113200      Elsie Rips      (Not for Publication)

v.  
Orrin P. Miller, et al.  
Imperial Home Mortgage Co. Inc.

In so far as the judgment determines that Rips shall be liable to Imperial for 15% of the damages awarded to the Hodgsons (whatever they turn out to be), it is affirmed. In addition, so far as the judgment determines that Imperial is liable to the Hodgsons for its negligent conduct, it is affirmed. Otherwise, the judgment is reversed as to the award of damages for emotional distress and the matter is remanded for further proceedings not inconsistent with the views expressed herein. Elsie Rips as Trustee of the Optiplan Inc. Employee Profit Sharing Trust shall recover her costs on appeal from Imperial. The Hodgsons shall recover their costs on appeal.

Croskey, J.

We concur: Klein, P.J.  
                  Kitching, J.

B115265      Los Angeles County, D.C.S.      (Not for Publication)

v.  
Miguel C.  
In Re Miguel C. & Linda C.

The dependency court's disposition order is affirmed.

Croskey, J.

We concur: Klein, P.J.  
                  Aldrich, J.



DIVISION THREE (Continued)

B094780 Cherylynn Brown

(Not for Publication)

v.

Robert Zmuda, et al.

Upon remand, the trial court first is directed to sign and enter a judgment of dismissal nunc pro tunc to the date of its order sustaining defendants' demurrer without leave to amend.

As to Comic Relief, we affirm the judgment in favor of Comic Relief as to the wrongful eviction, conversion, and intentional and negligent infliction of emotional distress causes of action, but reverse as to the breach of contract cause of action; and direct the trial court to enter an order overruling the demurrer as to that single cause of action against Comic Relief.

As to Zmuda, both individually and in his capacity as president of Comic Relief, the judgment is reversed as to the first, second, third and fourth and fifth causes of action. The trial court is directed to vacate its order sustaining the demurrer without leave to amend and enter a new order overruling the demurrer as to the first, second, third, and fourth causes of action, and sustaining the demurrer as to the fifth cause of action but granting Brown 30 days' leave to amend as to such fifth cause of action, and to then conduct further proceedings consistent with the views expressed herein. As noted above, upon remand, the trial court shall also rule on the defendants' special demurrers (*E.L. White, Inc. v. City of Huntington Beach*, *supra*, 21 Cal.3d 497 at p. 504, fn. 1), bearing in mind that when a special demurrer is sustained for uncertainty or ambiguity in the pleading, the plaintiff also must be given an opportunity to clarify the uncertainty or ambiguity unless the pleading shows on its face that the defect cannot be cured (*Association of Community Organizations for Reform Now v. Department of Industrial Relations*, *supra*, 41 Cal.App.4th at p.302, fn. 2; *Columbia Pictures Corp. v. DeToth*, *supra*, 26 Cal.2d at pp. 758, 762), and that it is an abuse of discretion to sustain a special demurrer without leave to amend since it is directed to a defect of form rather than of substance. (*Linggi v. Garovotti*, *supra*, 45 Cal.2d at p. 23.)

Plaintiff Cherylynn Brown shall recover her costs on appeal from Defendant Zmuda.

Croskey, Acting P.J.

We concur: Aldrich, J.

Goodman, J. (Assigned)

DIVISION THREE (Continued)

B111977      Michael J. Nathanson      (Not for Publication)

v.  
Inglis, Ledbetter & Gower, etc., et al.

The order of dismissal is affirmed. Defendants shall recover their costs on appeal from plaintiff.

Croskey, J.

We concur:   Klein, P.J.  
                  Goodman, J. (Assigned)

B112678      Vincente Echevarria , et al.      (Not for Publication)

v.  
Los Angeles Unified School District

The judgment is affirmed. Defendant shall recover its costs on appeal from plaintiffs.

Croskey, Acting P.J.

We concur:   Kitching, J.  
                  Goodman, J. (Assigned)

B108964      Joe Hinojos, et al.      (Not for Publication)

v.  
Jose Angel Saucedo

The October 29, 1996 order imposing sanctions is reversed. Costs on appeal to defendant.

Croskey, J.

We concur:   Klein, P.J.  
                  Goodman, J. (Assigned)

DIVISION THREE (Continued)

B115243      Gino J. C. Salinas      (Not for Publication)

v.  
City of Los Angeles, et al.

The judgments are affirmed. The City defendants and the County defendants shall recover their costs on appeal.

Croskey, J.

We concur:   Klein, P.J.  
                  Kitching, J.

DIVISION FOUR

B098458      Center West      (Not for Publication)

v.  
Daniel, Mann, Johnson & Mendenhall

The judgment is affirmed. Costs are awarded to respondent Center West.

Hastings, J.

We concur:   Epstein, Acting P.J.  
                  Cooper (F.M.), J. (Assigned)

B115554      People      (Not for Publication)

v.  
Martinez

The Court:

The judgment is affirmed.

Vogel (C.S.), P.J., Epstein, J., Hastings, J.

August 20, 1998-Continued

DIVISION FOUR (Continued)

B119904      People                          (Not for Publication)  
v.  
Tate

The Court:

The judgment is affirmed.

Vogel (C.S.), P.J., Epstein, J., Hastings, J.

B111020 People v. Baserga (Not for Publication)

The Court:

The judgment is affirmed.

Vogel (C.S.), P.J., Epstein, J., Hastings, J.

[illegible]

The Court:

For the foregoing reasons, the order declaring that “Minor may not be held in physical confinement for a period to exceed 5 years” is modified to read, “Minor may not be held in physical confinement for a period to exceed 4 years.” As modified, the judgment is affirmed.

Vogel (C.S.), P.J., Epstein, J., Hastings, J.

## DIVISION FOUR (Continued)

B118127 People (Not for Publication)  
v.  
Markham

The Court:

The judgment is affirmed.

Vogel (C.S.), P.J., Epstein, J., Hastings, J.

[illegible]

The Court:

For the foregoing reasons, the dispositional order of October 14, 1997, is hereby amended to show that appellant's maximum period of confinement on petitions filed pursuant to Welfare and Institutions Code section 602 on December 2, 1993, on December 18, 1995, and on September 23, 1997, is 11 years, calculated as set forth in this opinion. In all other respects, the judgment is affirmed.

Vogel (C.S.), P.J., Epstein, J., Hastings, J.

B118813 People (Not for Publication)  
v.  
Eric B.

The Court:

For the foregoing reasons, the order that “Minor may not be held in physical confinement for a period to exceed 18 years” is modified to state, “Minor may not be held in physical confinement for a period to exceed 15 years.” As modified the judgment is affirmed. The juvenile court is directed to forward to the California Youth Authority an amended dispositional order in accord with this opinion.

Vogel (C.S.), P.J., Epstein, J., Hastings, J.

August 20, 1998-Continued

## DIVISION FOUR (Continued)

B110971 People (Not for Publication)  
v.  
Glover

The Court:

The judgment is affirmed.

Vogel (C.S.), P.J., Epstein, J., Hastings, J.

B119213      People      (Not for Publication)  
v.  
James

The judgment is affirmed.

Vogel (C.S.), P.J.

We concur: Epstein, J.  
Hastings, J.

B114989 People (Not for Publication)  
v.  
Jones

The judgment is affirmed.

Epstein, J.

We concur: Vogel (C.S.), P.J.  
Hastings, J.

B117929      People  
v.  
David Jones

Filed order denying petition for rehearing.

August 20, 1998-Continued

DIVISION FIVE

B109809      People                                  (Not for Publication)  
v.  
Willie Gaither

The judgment is modified to reduce the restitution fine from \$2,500 to \$200. As modified, the judgment is affirmed.

Godoy Perez, J.

We concur: Grignon, Acting P.J.  
Armstrong, J.

DIVISION SIX

B115765      Herrera      (Not for Publication)  
v.  
State of California

The judgment is affirmed. Costs are awarded to respondent.

Gilbert, J.

We concur: Stone, P.J.  
Yegan, J.

B120217      Zampese      (Not for Publication)  
v.  
Zampese

The judgment is reversed and remanded for recalculation of accrued support as to Junior. Wife is awarded costs on appeal.

Yegan, J.

We concur:   Stone, P.J.  
                      Coffee, J.

DIVISION SEVEN

B115565      Walters Wholesale Electric Company      (Not for Publication)  
                 v.  
                 C.T. & F., Inc.

The judgment is affirmed. Respondents are entitled to costs on appeal.

Lillie, P.J.

We concur:   Johnson, J.  
                 Woods, J.

B117549      Cha      (Not for Publication)  
                 v.  
                 Limb

The judgment is affirmed. Respondent is entitled to costs on appeal.

Lillie, P.J.

We concur:   Johnson, J.  
                 Woods, J.

B114251      Bader, et al.      (Not for Publication)  
                 v.  
                 Bacle

The judgment granting the motion to strike the complaint is affirmed.  
Respondent is entitled to costs on appeal.

Lillie, P.J.

We concur:   Johnson, J.  
                 Woods, J.



DIVISION SEVEN (Continued)

B096536      Traweek, et al.      (Not for Publication)

v.

Manatt, Phelps, Rothenberg, Tunney & Phillips

The order vacating the judgment is reversed and the summary judgment is affirmed. Manatt Phelps shall have its costs on appeal.

Lillie, P.J.

We concur:   Johnson, J.

Woods, J.

B116085      Pair City Development, Inc.      (Not for Publication)

v.

Apcoa, Inc.

The order granting the motion for summary judgment is affirmed; that part of the judgment awarding attorneys' fees is modified to award attorneys' fees in the amount of \$25,885.25, and as so modified, is affirmed. The parties are to bear their own costs on appeal.

Lillie, P.J.

We concur:   Johnson, J.

Woods, J.

B112918      Barnes, et al.      (Not for Publication)

v.

Fraizer, et al.

The appeal is dismissed.

Johnson, J.

We concur:   Lillie, P.J.

Neal, J.

August 20, 1998-Continued

## DIVISION SEVEN (Continued)

[illegible]

The order sentencing appellant is vacated and set aside. In all others respects, the judgment is affirmed.

Johnson, J.

We concur: Lillie, P.J.  
Woods, J.

B116244      People                                  (Not for Publication)  
v.  
Talbert, Alvarez and Walford

The judgments are affirmed.

Johnson, J.

We concur: Lillie, P.J.  
Neal, J.